

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.03.2018

Coram

THE HON'BLE MR.JUSTICE C.T.SELVAM
and
THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.2488 of 2017

Jayaseelan ... Petitioner
Vs.

1. The Secretary to the Government,
Home, Prohibition and Excise Department
Secretariat, Chennai 600 009.
- 2.The District Collector
and District Magistrate,
Krishnagiri District,
Krishnagiri. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for records in connection with the order of Detention passed by the second respondent dated 05.12.2017 in S.C.No.70/2017 against the petitioner's brother Sathish @ Sathish Kumar, male aged 32 years, S/o.Narayanasamy, who is confined in Central Prison, Salem and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

For Petitioner : Mr.D.Balaji

For Respondents : Mr.R.Prathap Kumar,
Addl. Public Prosecutor.

O R D E R

(Order of the Court was made by N.SATHISH KUMAR, J.)

The petitioner is the brother of the detenu, namely, Sathish @ Sathish Kumar, male aged 32 years, S/o.Narayanasamy. The detenu has been detained by the second respondent by his order in S.C.No.70/2017, dated 05.12.2017 holding him to be a "Goonda", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner would mainly focus his argument on the ground that there is gross violation of procedural safeguards, which would vitiate the detention. The learned counsel, by placing authorities, submitted that the representation made by the petitioner was not considered on time and there was an inordinate and unexplained delay with regard to the same.

4. The learned Additional Public Prosecutor opposed the Habeas Corpus Petition. He would submit that though there was delay in considering the representation, on that score alone, the impugned detention order cannot be quashed. According to the learned Additional Public Prosecutor, no prejudice has been caused to the detenu and thus, there is no violation of the fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India.

5. The Detention Order in question was passed on 05.12.2017. The petitioner made a representation dated 09.01.2018 and the same was received on 10.01.2018. Thereafter, remarks were called for by the Government from the Detaining Authority on 10.01.2018. The remarks were duly received on 02.02.2018. Thereafter, the Government considered the matter and passed the order rejecting the petitioner's representation 08.02.2018.

6. It is the contention of the petitioner that there was an inordinate delay of 22 days, of which 9 days were Government Holidays and hence there was an inordinate delay of 13 days in submitting the remarks by the Detaining Authority. Thereafter, another unexplained delay of 5 days, of which 2 days were Government Holidays and hence, there was an unexplained delay of 3 days in considering the representation.

7. In *Rekha vs. State of Tamil Nadu*, reported in 2011 (5) SCC 244, the Honourable Supreme Court has held that the procedural safeguards are required to be zealously watched and enforced by the Courts of law and their rigour cannot be allowed to be diluted on the basis of the nature of the alleged activities undertaken by the detenu.

8. In Sumaiya vs. The Secretary to Government, reported in 2007 (2) MWN (Cr.) 145, a Division Bench of this Court has held that the unexplained delay of three days in disposal of the representation made on behalf of the detenu would be sufficient to set aside the order of detention.

9. In Tara Chand vs. State of Rajasthan and others, reported in 1980 (2) SCC 321, the Honourable Supreme Court has held that any inordinate and unexplained delay on the part of the Government in considering the representation renders the very detention illegal.

10. In the subject case, admittedly, there is an inordinate delay of 13 days in submitting the remarks by the Detaining Authority and unexplained delay of 3 days in considering the representation. The impugned detention order is, therefore, liable to be quashed.

11. In the result, the Habeas Corpus Petition is allowed and the order of detention in S.C.No.70/2017, dated 05.12.2017, passed by the second respondent is set aside. The detenu, namely, Sathish @ Sathish Kumar, male aged 32 years, S/o.Narayanasamy, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vrc

To

1. The Secretary to Government,
Prohibition and Excise Department
Fort. St. George, Chennai 600 009.

2.The District Magistrate
and District Collector,
Salem District,
Salem.

3.The Joint Secretary to Government
Public Law and Order Department
Government of Tamil Nadu
Fort St. George, Chennai-9.

4.The Superintendent,
Central Prison,
Salem.
(In duplicate for communication to the detenu)

5.The Public Prosecutor,
Madras High Court, Chennai.

6.The District Collector
and District Magistrate,
Krishnagiri District,
Krishnagiri.

NRI (CO)
sm:9.4.2018

H.C.P.No.2488 of 2017



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